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# INVESTMENT FUNDS, COMPANIES AND MISCELLANEOUS PROVISIONS ACT 2005

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Acts Referred to

| | |
|---|---|
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| Central Bank Act 1942 | 1942, No. 22 |
| Central Bank and Financial Services Authority of Ireland Act 2003 | 2003, No. 12 |
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| Companies Act 1963 | 1963, No. 33 |
| Companies Act 1990 | 1990, No. 33 |
| Companies (Amendment) Act 1982 | 1982, No. 10 |
| Companies (Amendment) Act 1983 | 1983, No. 13 |
| Companies (Amendment) Act 1986 | 1986, No. 25 |
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| Companies (Amendment) Act 1999 | 1999, No. 8 |
| Companies (Amendment) (No. 2) Act 1999 | 1999, No. 30 |
| Companies (Auditing and Accounting) Act 2003 | 2003, No. 44 |
| Companies Acts 1963 to 2003 | |
| Company Law Enforcement Act 2001 | 2001, No. 28 |
| Competition Act 2002 | 2002, No. 14 |
| Consumer Credit Act 1995 | 1995, No. 24 |
| Consumer Information Act 1978 | 1978, No. 1 |
| Credit Union Act 1966 | 1966, No. 19 |
| Credit Union Act 1997 | 1997, No. 15 |
| Dormant Accounts Act 2001 | 2001, No. 32 |
| Electronic Commerce Act 2000 | 2000, No. 27 |
| European Communities Act 1972 | 1972, No. 27 |
| Industrial and Provident Societies Act 1893 | 56 & 57 Vict., c. 39 |
| Industrial and Provident Societies (Amendment) Act 1913 | 3 & 4 Geo. 5. c. 31 |
| Investment Intermediaries Act 1995 | 1995, No. 11 |
| Investment Limited Partnerships Act 1994 | 1994, No. 24 |
| Irish Takeover Panel Act 1997 | 1997, No. 5 |
| Limited Partnerships Act 1907 | 7 Edw. 7 c. 24 |
| National Standards Authority of Ireland Act 1996 | 1996, No. 28 |
| Package Holidays and Travel Trade Act 1995 | 1995, No. 17 |
| Partnership Act 1890 | 53 & 54 Vict., c. 93 |
| Petty Sessions (Ireland) Act 1851 | 14 & 15 Vict., c. 93 |
| Postal and Telecommunications Services Act 1983 | 1983, No. 24 |
| Prices Act 1958 | 1958, No. 4 |
| Prices (Amendment) Act 1972 | 1972, No. 20 |
| Restrictive Practices Act 1972 | 1972, No. 11 |
| Restrictive Practices (Amendment) Act 1987 | 1987, No. 31 |
| Sale of Goods and Supply of Services Act 1980 | 1980, No. 16 |
| Taxes Consolidation Act 1997 | 1997, No. 39 |
| Unclaimed Life Assurance Policies Act 2003 | 2003 No. 2 |
| Unit Trusts Act 1990 | 1990, No. 37 |

*Number* 12 *of* 2005

# INVESTMENT FUNDS, COMPANIES AND MISCELLANEOUS PROVISIONS ACT 2005

AN ACT TO MAKE PROVISION IN RELATION TO COLLECTIVE INVESTMENT UNDERTAKINGS OF THE KIND KNOWN AS "COMMON CONTRACTUAL FUNDS"; TO AMEND PART XIII OF THE COMPANIES ACT 1990 AND THE EUROPEAN COMMUNITIES (UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES) REGULATIONS 2003 (S.I. NO. 211 OF 2003); TO MAKE PROVISION IN RELATION TO CERTAIN OF THE MATTERS DEALT WITH BY ACTS ADOPTED BY INSTITUTIONS OF THE EUROPEAN COMMUNITIES IN THE FIELDS OF INSIDER TRADING AND MANIPULATION AND OTHER ABUSES OF FINANCIAL MARKETS AND IN THE FIELD OF OFFERS TO THE PUBLIC OF SECURITIES OR THE ADMITTANCE OF SECURITIES TO TRADING; TO EFFECT CERTAIN MISCELLANEOUS AMENDMENTS TO THE COMPANIES ACTS 1963 TO 2003; TO AMEND THE IRISH TAKEOVER PANEL ACT 1997 AND THE COMPETITION ACT 2002; TO INCREASE THE PENALTIES FOR OFFENCES UNDER THE PRICES ACT 1958, THE RESTRICTIVE PRACTICES ACT 1972 AND CERTAIN ENACTMENTS THAT RELATE TO PROTECTION OF THE CONSUMER; TO AMEND THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT 1893 AND TO PROVIDE FOR RELATED MATTERS.

[29*th June*, 2005]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

## PART 1

### Preliminary and General

Short title, collective citation and construction.

**1**.—(1) This Act may be cited as the Investment Funds, Companies and Miscellaneous Provisions Act 2005.

(2) *Parts 3* to *6* and the Companies Acts 1963 to 2003 may be cited together as the Companies Acts 1963 to 2005 and shall be construed together as one.

Commencement.

**2**.—(1) This Act (other than *sections 85* and *86*) shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(2) Without prejudice to the generality of *subsection (1)*, an order or orders under that subsection may appoint different days for the coming into operation of *section 31* so as to effect the repeal provided by that section of an enactment specified in it on different days for different purposes.

Interpretation generally.

**3**.—(1) In this Act—

"Act of 1963" means the Companies Act 1963;

"Act of 1990" means the Companies Act 1990;

"contravention" includes, in relation to any provision, a failure to comply with that provision and "contravene" shall be construed accordingly;

"enactment" includes an instrument made under an enactment;

"Member State", where used without qualification, means Member State of the European Union;

"Minister" means the Minister for Enterprise, Trade and Employment.

(2) In this Act—

(*a*) a reference to a section or Part is a reference to a section or Part of this Act unless it is indicated that reference to some other enactment is intended,

(*b*) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and

(*c*) a reference to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or adapted by or under any other enactment.

Orders and regulations.

**4**.—(1) Every order or regulation made under this Act (other than an order made under *section 2* or *37*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

(2) The Minister may by order amend or revoke an order made under this Act (other than an order made under *section 2* or *37* but including an order made under this subsection).

**5**.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Expenses.

## PART 2

### Common Contractual Funds

**6**.—(1) In this Part, unless the context otherwise requires—

Interpretation (*Part 2*).

"Bank" means the Central Bank and Financial Services Authority of Ireland;

"common contractual fund" means a collective investment undertaking, being an unincorporated body established by a management company, under which the participants by contractual arrangement participate and share in the property of the collective investment undertaking as co-owners, provided—

(*a*) it is expressly stated in its deed of constitution to be established pursuant to this Act,

(*b*) it holds an authorisation issued in accordance with this Act, and

(*c*) it is not established pursuant to Council Directive No. 85/611/EEC of 20 December 1985[1], as amended from time to time.

"debentures" means any debentures, debenture stock or bonds of any body corporate, incorporated in or outside the State, whether constituting a charge on the assets of the body or not;

"deed of constitution" or "deed" means the deed under which the common contractual fund is constituted, and references to the deed of constitution of a common contractual fund shall be construed accordingly;

"holding company" has the same meaning as in the Act of 1963;

"sub-fund" means a separate portfolio of assets maintained by a common contractual fund in accordance with its deed of constitution;

"subsidiary" has the same meaning as in the Act of 1963;

"UCITS Regulations" means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003) as amended;

"unit-holder" means the holder of one or more units of a common contractual fund and references to a unit-holder in such a common contractual fund shall be construed accordingly;

"units" means instruments granting an entitlement to share in the investments and relevant income of a common contractual fund;

"umbrella fund" means a common contractual fund which is divided into a number of sub-funds.

[1]OJ L375, 31.12.1985, p. 3

(2) Any reference in this Part to a management company of a common contractual fund or to a custodian of such a common contractual fund shall be construed as a reference to the person in whom are vested the powers of management relating to property of the fund for the time being or, as the case may be, to the person in whom such property is entrusted for safe-keeping.

(3) Any reference in this Part to an authorisation, in relation to a common contractual fund, standing revoked under this Act shall be construed as a reference to an authorisation standing revoked under Regulation 102 of the UCITS Regulations as applied by *section 18*.

(4) For the purposes of the application by *section 18* of certain provisions of the UCITS Regulations to common contractual funds, the said provisions shall be construed as one with this Part.

Non-application of this Part to certain undertakings.

**7**.—(1) The provisions of this Part shall not apply to an undertaking for collective investment in transferable securities (within the meaning of the UCITS Regulations) that is authorised—

(*a*) under the UCITS Regulations, or

(*b*) by a competent authority in another Member State of the European Communities in accordance with Council Directive No. 85/611/EEC of 20 December 1985, as amended from time to time.

(2) A common contractual fund shall not be subject to the provisions respecting—

(*a*) a partnership under the Partnership Act 1890, the Limited Partnerships Act 1907 or the Investment Limited Partnerships Act 1994, or

(*b*) a unit trust scheme under the Unit Trusts Act 1990.

Authorisation of non-UCITS common contractual funds.

**8**.—(1) The Bank shall authorise a common contractual fund if, but only if—

(*a*) the Bank is satisfied that—

(i) the competence of the management company and custodian in respect of matters of the kind with which they would be concerned in relation to a common contractual fund, and

(ii) their probity,

are such as to render them suitable to act as management company and custodian respectively, under the common contractual fund,

(*b*) the management company of the common contractual fund—

(i) is a body corporate that has its registered office and head office in the State, and

(ii) has, in the opinion of the Bank, sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities,

(*c*) the custodian of the common contractual fund—

(i) either has its registered office in the State or has established a place of business in the State if its registered office is in another Member State,

(ii) has, in the opinion of the Bank, sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities, and

(iii) can satisfy the Bank that it has the appropriate expertise and experience to perform its functions under this Part,

(*d*) the Bank is satisfied that the common contractual fund is organised such that the effective control over the affairs of the management company and of the custodian of the common contractual fund will be exercised independently of one another,

(*e*) the Bank has approved the deed of constitution and the deed of constitution contains a covenant providing that the common contractual fund will be carried on in compliance with the provisions of this Act,

(*f*) a copy of the deed of constitution is deposited with the Bank, and

(*g*) the name of the common contractual fund is not, in the opinion of the Bank, undesirable.

(2) An application for authorisation of a common contractual fund shall be made in writing jointly by the proposed management company and custodian of the proposed common contractual fund and shall contain such information as the Bank may specify for the purpose of determining the application (including such additional information as the Bank may specify in the course of determining the application).

(3) The authorisation of a common contractual fund by the Bank shall not constitute a warranty by the Bank as to the performance of the common contractual fund and the Bank shall not be liable for the performance or default of the common contractual fund.

Public information and reporting on authorisation of common contractual funds.

**9**.—(1) The Bank shall establish and maintain a register of common contractual funds.

(2) The Bank shall ensure that the register is kept at a specified office of the Bank and is made available for inspection by members of the public during the ordinary business hours of that office.

(3) If the register is kept in a form that is not immediately legible, the Bank shall make available a version of it that is in legible form.

(4) A person who, during the ordinary business hours of the Bank, attends the office at which the Bank keeps the register is entitled—

(*a*) to inspect the register without charge, and

(*b*) on payment of a fee (if any) prescribed under section 33K (inserted by the Central Bank and Financial Services

Authority of Ireland Act 2003) of the Central Bank Act 1942, for the purposes of this subsection, to obtain a copy of any entry in the register.

(5) The Bank shall, within 21 days after the date of the authorisation by it under *section 8* of a common contractual fund, publish a notice to that effect in *Iris Oifigiúil*.

(6) The Bank shall publish from time to time, but not less frequently than once a year, in such manner as it thinks fit, the names of all common contractual funds which have been authorised by it under *section 8* and whose authorisation has not been revoked under this Part.

(7) The Bank shall include in its annual report to the Minister for Finance a report on the performance of its functions under this Part.

(8) The Bank shall give to the Minister a copy of the report on the performance of its functions under this Part referred to in *subsection (7)*.

Powers of Bank.

**10**.—(1) Notwithstanding any other powers which may be available to the Bank under any other enactment, the Bank may impose such conditions for the authorisation of a common contractual fund under *section 8* as it considers appropriate and prudent for the purposes of the orderly and proper regulation of the business of common contractual funds.

(2) The power to impose conditions referred to in *subsection (1)* shall include power to impose such conditions from time to time in respect of the manner in which the business of a common contractual fund authorised under *section 8* shall be operated as the Bank considers appropriate and prudent for the purposes referred to in *subsection (1)*.

(3) Conditions imposed under this section may be imposed generally or on a particular common contractual fund, or by reference to a particular class or classes of common contractual fund, or by reference to any other matter the Bank considers appropriate and prudent for the purposes referred to in *subsection (1)*.

(4) Without prejudice to the generality of *subsections (1)*, *(2)* and *(3)*, conditions imposed by the Bank on a common contractual fund may make provision for any or all of the following matters—

(*a*) the prudential requirements of the investment policies of the common contractual fund,

(*b*) borrowing policies of the common contractual fund,

(*c*) prospectuses and other information disseminated in relation to the common contractual fund,

(*d*) the safe-keeping of the assets of the common contractual fund,

(*e*) such other supervisory and reporting requirements and conditions relating to its business as the Bank considers appropriate and prudent.

(5) The Bank may amend or revoke a condition imposed by it under this section.

(6) The management company and custodian of a common contractual fund shall comply with any conditions imposed by the Bank in relation to that common contractual fund.

Refusal of authorisation.

**11**.—(1) Where the Bank decides to refuse authorisation of a common contractual fund, it shall notify the management company and the custodian of the common contractual fund of its decision and of the reasons therefor.

(2) The management company may apply to the High Court for a review of the decision in accordance with Regulation 105 of the UCITS Regulations (as applied by *section 18*).

(3) The management company shall have the same right to apply to the High Court as in *subsection (2)* if a decision on authorisation under *section 8* has not been taken by the Bank within 6 months of the submission of an application for authorisation which includes the information (other than any additional information sought by the Bank) specified by the Bank under *section 8(2)*.

Alteration in deed of constitution of, or change in name of, common contractual fund.

**12**.—(1) No alteration in the deed of constitution of a common contractual fund or change in the name of such a common contractual fund shall be made without the approval of the Bank and—

(*a*) any person who makes such an alteration or change without such approval shall be guilty of an offence, and

(*b*) any such alteration made without the approval of the Bank is void.

(2) Within 21 days after the making of an alteration in the deed of constitution of a common contractual fund or a change in the name of a common contractual fund, the management company of the common contractual fund shall deposit with the Bank a copy of the deed of constitution as so altered or containing the alterations or (as the case may be) particulars of the change in name.

(3) Where the management company of a common contractual fund fails to comply with *subsection (2)*, it shall be guilty of an offence.

Replacement of management company or custodian.

**13**.—(1) The deed of constitution shall specify the conditions for the replacement of the management company or custodian of the common contractual fund with another management company or custodian and shall contain provisions to ensure the protection of unit-holders in the event of any such replacement.

(2) Neither the management company nor the custodian may be replaced without the approval of the Bank.

Obligation on management companies under common contractual funds to purchase units.

**14**.—(1) Subject to Regulation 63 of the UCITS Regulations, as applied by *section 18*, whenever the unit-holder in a common contractual fund, or the unit-holder in a common contractual fund the authorisation of which stands revoked under this Part, so requests, the management company of the common contractual fund shall, in accordance with the provisions of the deed of constitution of the fund and any relevant conditions imposed by the Bank, redeem out of the assets of the common contractual fund such number of the units of the common contractual fund held by the unit-holder as that

person may specify at the price for the time being at which the management company redeems units of the common contractual fund.

(2) *Subsection (1)* shall not apply to the extent the Bank may specify in a condition imposed by it under *section 10*.

(3) A management company which contravenes *subsection (1)* shall be guilty of an offence.

Prohibition of certain transactions and making of certain profits by management companies, etc.

**15**.—(1) Neither a management company of a common contractual fund (the "corporate body") nor a subsidiary or a holding company of that corporate body or a subsidiary of the holding company of that corporate body or a director or person engaged in the management of such corporate body or company shall carry out transactions for it, him or herself, or make a profit for it, him or herself from transactions, in any assets held under the scheme save in accordance with the deed of constitution and any conditions imposed by the Bank.

(2) A person who contravenes this section shall be guilty of an offence.

Assets of common contractual funds.

**16**.—(1) The assets of a common contractual fund shall belong exclusively to the common contractual fund and the assets shall be entrusted to a custodian for safe-keeping in accordance with conditions imposed by the Bank under *section 10*.

(2) Where a common contractual fund is established as an umbrella fund, the assets shall belong exclusively to the relevant sub-fund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other sub-fund and shall not be available for any such purpose.

(3) The liabilities of a unit-holder, as such a holder, shall be limited to the amount agreed to be contributed by him or her for the subscription of units.

(4) The provisions of the deed of constitution shall be binding on the unit-holder and all persons claiming through the unit-holder as if such persons had been party to the deed.

Liability of custodians of common contractual funds.

**17**.—(1) The custodian shall exercise due care and diligence in the discharge of its duties and shall be liable to the unit-holders and management company for any loss arising from the negligence, fraud, bad faith, wilful default or recklessness in the performance of those duties.

(2) Unit-holders may enforce this liability either directly or indirectly through the management company.

Application of certain provisions of UCITS Regulations.

**18**.—(1) Regulations 63, 77 to 85 and 98 to 105 of the UCITS Regulations shall apply to a common contractual fund as they apply to the bodies to which those Regulations relate subject to the following modifications and any other necessary modifications—

(*a*) a reference in those Regulations to a term or expression specified in the second column of the Table to this section at any reference number shall be construed, where the context admits, as a reference to the term or expression

specified in the third column of the said Table at that reference number, and

(*b*) references to cognate terms or expressions in those Regulations shall be construed accordingly,

(*c*) references to "the articles" and "the Directive" in those Regulations shall be disregarded,

(*d*) the words "and the other information provided for in Schedule 2 to these Regulations" in Regulation 79 and the first sentence of Regulation 80 of those Regulations shall be disregarded and Regulation 80 shall have effect as if there were inserted the words "in the half-yearly report" after the words "the figures",

(*e*) paragraph (4)(d) of Regulation 102 shall be disregarded,

(*f*) references to "simplified prospectus" in Regulations 82 and 83 shall be disregarded.

(2) In *subsection (1)* "common contractual fund" includes a common contractual fund the authorisation of which stands revoked under Regulation 102 of the UCITS Regulations as applied and adapted by this section.

TABLE

| Ref. No. (1) | Term or expression referred to in UCITS Regulations (2) | Construction of term or expression for purposes of this section (3) |
|---|---|---|
| 1. | "Regulation 14" | "*section 11* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005*" |
| 2. | "Regulation 59" | "*section 14* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005*" |
| 3. | "these Regulations" | "*Part 2* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005*" |
| 4. | "repurchase" | "purchase" |
| 5. | "UCITS" | "common contractual fund" |
| 6. | "section 8 of the Unit Trusts Act 1990" | "*section 13* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005*" |

Offences in relation to certain bodies.

**19**.—Where an offence under this Part is committed by a body corporate and is proved to have been so committed with the consent or approval of, or to have been facilitated by any wilful neglect on the part of any person being a director, manager, secretary, member of any committee of management or other controlling authority of such body or official of such body, that person shall also be guilty of an offence.

Offences under provisions of this Part.

**20**.—A person who contravenes any provision of this Part and for which contravention no offence is created by any other provision of this Part shall be guilty of an offence.

Penalties.

**21**.—(1) A person guilty of an offence under this Part shall be liable—

(*a*) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(*b*) on conviction on indictment to a fine not exceeding €15,000 or imprisonment for a term not exceeding 5 years or both,

and, if the contravention in respect of which he or she is convicted of an offence under this Part is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence the person shall be liable on summary conviction to a fine not exceeding €400 or, on conviction on indictment, to a fine not exceeding €1,900.

(2) *Subsection (1)(b)* shall not apply to a person guilty of an offence under *section 20*.

(3) Summary proceedings in relation to an offence under this Part may be brought and prosecuted by the Bank.

(4) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Part may be instituted within 3 years from the date of the offence.

## PART 3

### Amendments to Part XIII of Act of 1990

Amendment of section 252 of Act of 1990.

**22**.—Section 252(1) of the Act of 1990 is amended by including, in the appropriate places, the following additional definitions—

" 'management company' means a company designated by an investment company to undertake the management of the investment company;

'sub-fund' means a separate portfolio of assets maintained by an investment company in accordance with its articles;

'umbrella fund' means an investment company which has one or more sub-funds and which is authorised by the Central Bank pursuant to section 256.".

Amendment of section 254 of Act of 1990.

**23**.—Section 254 of the Act of 1990 is amended by substituting the following for subsection (2)—

"(2) An investment company shall not purchase its own shares, for the purposes referred to in section 253(2)(*b*)(ii), unless they are fully paid, but nothing in this subsection shall prevent a purchase being made in accordance with section 255(3).".

Amendment of section 255 of Act of 1990.

**24**.—Section 255 of the Act of 1990 is amended by adding the following after subsection (2):

"(3) Notwithstanding subsection (1), an umbrella fund may, for the account of any of its sub-funds, and in accordance with conditions imposed by the Central Bank pursuant to section 257, acquire by subscription or transfer for consideration, shares of any class or classes, howsoever described, representing other

sub-funds of the same umbrella fund provided that the acquisition is for a purpose otherwise than that provided for in section 253(2)(*b*)(ii).".

Segregated liability of sub-funds — insertion of new sections in Part XIII of Act of 1990.

**25**.—The following sections are inserted after section 256 of the Act of 1990:

"Segregated liability of investment company sub-funds.

256A.—(1) Notwithstanding any statutory provision or rule of law to the contrary, but subject to subsection (2), any liability incurred on behalf of or attributable to any sub-fund of an umbrella fund shall be discharged solely out of the assets of that sub-fund, and no umbrella fund nor any director, receiver, examiner, liquidator, provisional liquidator or other person shall apply, nor be obliged to apply, the assets of any such sub-fund in satisfaction of any liability incurred on behalf of or attributable to any other sub-fund of the same umbrella fund, whether such liability was incurred before, on or after the date this section commences.

(2) Subsection (1) shall not apply to an umbrella fund which was authorised and commenced trading prior to the date this section commences unless:

(*a*) the members of the umbrella fund shall have resolved by special resolution that the provisions of subsection (1) should apply to that umbrella fund, and

(*b*) the special resolution has taken effect in accordance with subsection (4).

(3) For the purposes of subsection (2), an umbrella fund shall be deemed to have commenced to trade prior to the date this section commences if—

(*a*) shares, other than the subscriber shares issued for the purposes of incorporation of the umbrella fund, were issued in any sub-fund of that umbrella fund prior to that commencement date and one or more of those shares remains in issue on that commencement date, or

(*b*) the umbrella fund, or any person acting on its behalf, entered into an agreement with a third party prior to that commencement date, which remains in force on that commencement date and pursuant to which the assets of any sub-fund may be applied in satisfaction of any liability incurred on behalf of or attributable to any other sub-fund of the same umbrella fund.

(4) If—

(*a*) no application to the court is made pursuant to section 256C, a special resolution passed pursuant to subsection (2) shall take effect on the date on which such resolution is passed or the 31st day following the date of service of notice on creditors issued pursuant to subsection (5)(*b*), whichever is the later, or

(*b*) an application is or applications are made to the court pursuant to section 256C, a special resolution pursuant to subsection (2) shall not take effect until—

(i) in the event that all applications made are withdrawn, the day on which such resolution is passed or the day next following the withdrawal of the last outstanding application, whichever is the later, subject to this day being no earlier than the 31st day following the date of service of notice on creditors; and

(ii) in the event that all applications made are not withdrawn, whichever of the following is the later, that is to say, the later of the day on which such resolution is passed, and:

(I) where an order is granted by the court pursuant to section 256C or on appeal pursuant to section 256D, the date specified in that order or, if no such date is specified, the day next following the date on which the period for which the order is specified to remain in force expires or, as appropriate, following the day on which it otherwise ceases to be in force; or

(II) where no appeal against any decision of the court is lodged pursuant to section 256D, the day next following the date on which the time period for such an appeal in relation to the last such determination of the court shall have elapsed; or

(III) where an appeal is lodged against any decision of the

court pursuant to section 256D, the day next following the date on which the last outstanding such appeal is disposed of or withdrawn,

unless a court has otherwise ordered under section 256C or 256D.

(5) Any notice of a meeting to consider a special resolution of the type referred to in subsection (2) shall be—

(*a*) accompanied by audited accounts for the umbrella fund which include a statement of the assets and liabilities of each sub-fund of the umbrella fund and which are prepared as at a date which is not more than four months before the date on which the notice convening the meeting is served (hereafter referred to in this section and section 256B as ‘statement of assets and liabilities’);

(*b*) given to all creditors of the umbrella fund accompanied by a copy of the statement of assets and liabilities, in accordance with the provisions of section 256B; and

(*c*) delivered to the registrar of companies, accompanied by the statement of assets and liabilities, no later than the third day after the date on which the notice is first sent to members of the umbrella fund.

Notice to creditors of special resolution under section 256A.

256B.—(1) The requirement in section 256A to give all creditors of the umbrella fund notice of a meeting to consider a special resolution shall be met if—

(*a*) a notice in writing, accompanied by the statement of assets and liabilities, is sent to each relevant creditor of a sub-fund, and

(*b*) a notice is published in at least one national newspaper in accordance with the terms of the prospectus for the umbrella fund, stating that the umbrella fund intends to avail of section 256A(1) and that an application may be made in accordance with section 256C, for an order pursuant to that section.

(2) For the purpose of this section, a relevant creditor of a sub-fund is any creditor for whom provision was made, in accordance with the articles of association, in the net asset value of the sub-fund calculated—

(*a*) in the case of a sub-fund in respect of which the net asset value is not calculated on a daily basis, as at the last valuation point for that sub-fund prior to the date of service of the notice pursuant to section 256A(5)(*b*); and

(*b*) in the case of a sub-fund in respect of which the net asset value is calculated on a daily basis, as at the second last valuation point for that sub-fund.

Application to court opposing special resolution under section 256A.

256C.—(1) An application may be made to the court in accordance with this section for an order preventing any resolution passed or proposed to be passed pursuant to section 256A(2) from taking effect in relation to any umbrella fund to which that section applies.

(2) An order under this section may be granted only if the court considers that it would be just and equitable to do so.

(3) Each order granted pursuant to this section shall specify the period in respect of which the order shall remain in force and, without prejudice to the powers of the court to specify such period, may specify that the order shall cease to be in force on the date on which the applicant ceases to be a creditor of the umbrella fund or the date on which the applicant consents to the application of section 256A(1) to that umbrella fund, whichever is the later.

(4) An application under this section may only be made by a relevant creditor or relevant creditors constituting not less than 1 per cent in number of the creditors of any sub-fund, or whose debts account for not less than 1 per cent in value of the debts owed by any sub-fund, in each case as provided for in the net asset value of that sub-fund referred to in section 256B.

(5) Any application pursuant to this section must be made by a relevant creditor within 28 days after the date of service of the notice referred to in section 256A(5)(*b*), and may be made on behalf of the creditors entitled to make the application by one or more of their number as they may appoint in writing for such purpose.

(6) Notice of an application to the court for the purposes of this section shall be sent by the relevant creditor or relevant creditors to the umbrella fund and to the Central Bank within two days after the date on which the application is made, and the umbrella fund and the Central Bank shall each be entitled to make representations to the court before an order is made.

(7) In considering whether it is just and equitable to make an order pursuant to this section, the court shall have regard to the following matters:

(*a*) the terms of any agreement or arrangement between the creditor or creditors and the umbrella fund or its delegates;

(*b*) the course of dealings between the creditor or creditors and the umbrella fund or its delegates;

(*c*) the conduct of the umbrella fund or its delegates towards the creditor or creditors;

(*d*) the extent to which the umbrella fund or its delegates represented to the creditor or creditors that it would have recourse to the assets of any other sub-fund to discharge the liabilities owed to the creditor or creditors;

(*e*) the extent to which it was reasonable for the relevant creditor or relevant creditors to expect to have recourse to the assets of any other sub-fund; and

(*f*) any other matters which the court shall deem relevant.

Appeal from court order under section 256C.

256D.—(1) Any creditor who has made an application pursuant to section 256C, or the umbrella fund in respect of which the application is made, may appeal to the Supreme Court against any decision of the court in respect of that application.

(2) Notice of any such appeal must be lodged within five days after the date on which the order is perfected by the court.

(3) Notice of any appeal lodged by the umbrella fund shall be sent to the Central Bank and to the relevant creditor or relevant creditors who made the application pursuant to section 256C within two days after the date on which the appeal is made.

(4) Notice of any appeal by the party which made the application pursuant to section 256C shall be sent to the Central Bank and to the umbrella fund within two days after the date on which the appeal is made.

Requirements to be complied with by, and other matters respecting, an umbrella fund to which section 256A applies.

256E.—(1) Every umbrella fund to which section 256A applies shall be required to include the words ‘An umbrella fund with segregated liability between sub-funds’ in all its letterheads and in any agreement entered into in writing with a third party, and shall be obliged to disclose that it is a segregated liability umbrella fund to any third party with which it enters into an oral contract.

(2) There shall be implied in every contract, agreement, arrangement or transaction entered

into by an umbrella fund to which section 256A applies the following terms, that—

(*a*) the party or parties contracting with the umbrella fund shall not seek, whether in any proceedings or by any other means whatsoever or wheresoever, to have recourse to any assets of any sub-fund of the umbrella fund in the discharge of all or any part of a liability which was not incurred on behalf of that sub-fund,

(*b*) if any party contracting with the umbrella fund shall succeed by any means whatsoever or wheresoever in having recourse to any assets of any sub-fund of the umbrella fund in the discharge of all or any part of a liability which was not incurred on behalf of that sub-fund, that party shall be liable to the umbrella fund to pay a sum equal to the value of the benefit thereby obtained by it, and

(*c*) if any party contracting with the umbrella fund shall succeed in seizing or attaching by any means, or otherwise levying execution against, any assets of a sub-fund of an umbrella fund in respect of a liability which was not incurred on behalf of that sub-fund, that party shall hold those assets or the direct or indirect proceeds of the sale of such assets on trust for the umbrella fund and shall keep those assets or proceeds separate and identifiable as such trust property.

(3) All sums recovered by an umbrella fund as a result of any such trust as is described in subsection (2)(*c*) shall be credited against any concurrent liability pursuant to the implied term set out in subsection (2)(*b*).

(4) Any asset or sum recovered by an umbrella fund pursuant to the implied term set out in subsection (2)(*b*) or (*c*) or by any other means whatsoever or wheresoever in the events referred to in those paragraphs shall, after the deduction or payment of any costs of recovery, be applied so as to compensate the sub-fund affected.

(5) In the event that assets attributable to a sub-fund to which section 256A applies are taken in execution of a liability not attributable to that sub-fund, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to that sub-fund affected, the directors of the umbrella fund, with the consent of the custodian, shall certify or cause to be certified, the value of the assets lost to the sub-fund affected and transfer or pay from the assets of the sub-fund or

sub-funds to which the liability was attributable, in priority to all other claims against such sub-fund or sub-funds, assets or sums sufficient to restore to the sub-fund affected, the value of the assets or sums lost to it.

(6) Without prejudice to the other provisions of sections 256A to 256D and this section, a sub-fund of an umbrella fund is not a legal person separate from that umbrella fund, but an umbrella fund may sue and be sued in respect of a particular sub-fund and may exercise the same rights of set-off, if any, as between its sub-funds as apply at law in respect of companies and the property of a sub-fund is subject to orders of the court as it would have been if the sub-fund were a separate legal person.

(7) Nothing in sections 256A to 256D and this section shall prevent the application of any enactment or rule of law which would require the application of the assets of any sub-fund in discharge of some or all of the liabilities of any other sub-fund on the grounds of fraud or misrepresentation and, in particular, by reason of the application of—

(*a*) section 286 of the Principal Act; and

(*b*) section 139 of this Act.

(8) A sub-fund may be wound up in accordance with the provisions of section 213(*e*) and section 251(1)(*c*) of the Principal Act as if the sub-fund were a separate company, provided always that the appointment of the liquidator or any provisional liquidator and the powers, rights, duties and responsibilities of the liquidator or any provisional liquidator shall be confined to the sub-fund or sub-funds which is or are being wound up.

(9) For the purposes of subsection (8), all references made in sections 213(*e*) and 251(1)(*c*) of the Principal Act and all relevant provisions of the Companies Acts relating to the winding up of a company pursuant to sections 213(*e*) and 251(1)(*c*) of the Principal Act to one of the following words shall be construed as follows—

(*a*) 'company' shall be read as referring to the sub-fund or sub-funds which is or are being wound up;

(*b*) a 'member' or 'members' shall be read as referring to the holders of the shares in that sub-fund or sub-funds; and

(*c*) 'creditors' shall be read as referring to the creditors of that sub-fund or sub-funds.".

Amendment of section 257 of Act of 1990.

**26**.—Section 257(4) of the Act of 1990 is amended—

(*a*) in paragraph (*d*), by substituting "subsections," for "subsections.", and

(*b*) by adding the following paragraph:

"(*e*) supervisory and reporting requirements and conditions relating to the business of a management company as the Central Bank considers appropriate or prudent to impose on the management company from time to time.".

Amendment of section 260 of Act of 1990.

**27**.—Section 260(3) of the Act of 1990 is amended by inserting ", 43, 43A" after "41".

Insertion of new section 260A in Act of 1990.

**28**.—The following section is inserted after section 260 of the Act of 1990:

"Application of section 148 of Principal Act.

260A.—(1) Notwithstanding section 148(2) of the Principal Act (inserted by the European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 (S.I. No. 116 of 2005)) an investment company may, in respect of its individual accounts, opt to prepare those accounts in accordance with both of the following, namely—

(*a*) an alternative body of accounting standards, and

(*b*) section 149A of the Principal Act,

as if the references in that section 149A to international financial reporting standards were references to that alternative body of accounting standards.

(2) In the application of subsections (4), (5) and (6) of section 148 of the Principal Act to an investment company which has opted under subsection (1) to prepare its accounts in accordance with an alternative body of accounting standards—

(*a*) the reference in that subsection (4) to international financial reporting standards shall be read as a reference to that alternative body of accounting standards, and

(*b*) there shall be substituted for 'IFRS', in each place where it occurs in those subsections (4), (5) and (6), 'ABAS' (which shall be read as referring to that alternative body of accounting standards).

(3) For the purposes of this section, accounts shall not be regarded as having been prepared in accordance with an alternative body of accounting standards unless the accounts concerned would,

were they to have been prepared by a company or undertaking registered in the relevant jurisdiction, be regarded as having been prepared in accordance with those standards.

(4) In this section—

'alternative body of accounting standards' means standards that accounts of companies or undertakings must comply with that are laid down by such body or bodies having authority to lay down standards of that kind in—

(*a*) United States of America,

(*b*) Canada,

(*c*) Japan, or

(*d*) any other prescribed state or territory,

as may be prescribed;

'relevant jurisdiction' means the state or territory in which the alternative body of accounting standards concerned have effect.

(5) Before making regulations for the purposes of subsection (4), the Minister—

(*a*) shall consult with the Central Bank, and

(*b*) may consult with any other persons whom the Minister considers should be consulted.

(6) If particular regulations for the purposes of subsection (4) are proposed to be made at a time subsequent to the commencement of Part 2 of the Companies (Auditing and Accounting) Act 2003, then, before making those regulations, the Minister shall also consult with the Irish Auditing and Accounting Supervisory Authority.".

## PART 4

### Market Abuse

Interpretation (*Part 4*).

**29**.—(1) In this Part—

"2003 Market Abuse Directive" means Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)[2], including that Directive as it stands amended for the time being;

"Irish market abuse law" means—

[2]OJ L096, 12.4.2003, p. 16

(*a*) the measures adopted for the time being by the State to implement the 2003 Market Abuse Directive and the supplemental Directives (whether an Act of the Oireachtas, regulations under section 3 of the European Communities Act 1972, regulations under *section 30* or any other enactment (other than, save where the context otherwise admits, this Part)),

(*b*) any measures directly applicable in the State in consequence of the 2003 Market Abuse Directive and, without prejudice to the generality of this paragraph, includes the Market Abuse Regulation, and

(*c*) any supplementary and consequential measures adopted for the time being by the State in respect of the Market Abuse Regulation;

"Market Abuse Regulation" means Commission Regulation 2273/2003 of 22 December 2003[3];

"supplemental Directives" means—

(*a*) Commission Directive No. 2003/124/EC of 22 December 2003[4],

(*b*) Commission Directive No. 2003/125/EC of 22 December 2003[5], and

(*c*) Commission Directive No. 2004/72/EC of 29 April 2004[6].

(2) A word or expression that is used in this Part and is also used in the 2003 Market Abuse Directive or the supplemental Directives shall have in this Part the same meaning as it has in the 2003 Market Abuse Directive or the supplemental Directives, unless—

(*a*) the contrary intention appears, or

(*b*) Irish market abuse law provides otherwise.

Regulations (*Part 4*).

**30**.—(1) The Minister may make regulations for the purposes of—

(*a*) giving effect to the 2003 Market Abuse Directive and the supplemental Directives, and

(*b*) supplementing and making consequential provision in respect of the Market Abuse Regulation.

(2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations, including provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence).

(3) Regulations under this section may also—

(*a*) make, for the purposes of those Regulations, provision analogous to that which was made by section 3 of the

[3]OJ L336, 23.12.2003, p. 33
[4]OJ L339, 24.12.2003, p. 70
[5]OJ L339, 24.12.2003, p. 73
[6]OJ L162, 30.4.2004, p. 70

Companies (Amendment) Act 1999 (repealed by *section 31*) for the purposes of that Act,

(*b*) impose on a market operator a requirement similar to that which is imposed by Article 6(9) of the 2003 Market Abuse Directive on the person referred to in that Article 6(9).

(4) This section is without prejudice to section 3 of the European Communities Act 1972.

Repeal of Part V of Act of 1990 and Companies (Amendment) Act 1999.

**31**.—The following are repealed:

(*a*) Part V of the Act of 1990, and

(*b*) the Companies (Amendment) Act 1999.

Conviction on indictment of offences under Irish market abuse law: penalties.

**32**.—A person who is guilty of an offence created by Irish market abuse law (being an offence expressed by that law to be an offence to which this section applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €10,000,000 or imprisonment for a term not exceeding 10 years or both.

Civil liability for certain breaches of Irish market abuse law.

**33**.—(1) If a person contravenes a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 2, 3 or 4 of the 2003 Market Abuse Directive) the person shall be liable—

(*a*) to compensate any other party to the transaction concerned who was not in possession of the relevant information for any loss sustained by that party by reason of any difference between the price at which the financial instruments concerned were acquired or disposed of and the price at which they would have been likely to have been acquired or disposed of in such a transaction at the time when the first-mentioned transaction took place if that information had been generally available, and

(*b*) to account to the body corporate or other legal entity which issued the financial instruments concerned for any profit accruing to the first-mentioned person from acquiring or disposing of those instruments.

(2) If a person contravenes a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 5 of the 2003 Market Abuse Directive) the person shall be liable—

(*a*) to compensate any other party who acquired or disposed of financial instruments by reason of the contravention, and

(*b*) to account to the body corporate or other legal entity which issued the financial instruments concerned for any profit accruing to the first-mentioned person from acquiring or disposing of those instruments.

(3) *Subsections (1)* and *(2)* are without prejudice to any other cause of action which may lie against the person for contravening the provision concerned.

(4) An action under *subsection (1)* or *(2)* shall not be commenced more than 2 years after the date of the contravention concerned.

Supplementary rules, etc., by competent authority.

**34.**—(1) In this section "competent authority" means the competent authority designated under Irish market abuse law.

(2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by Irish market abuse law, being requirements—

(*a*) to do or not to do specified things so as to secure that the provisions of Irish market abuse law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority,

(*b*) to do or not to do specified things so as to secure the effective supervision by the competent authority of activities of the kind to which Irish market abuse law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of Irish market abuse law.

(3) Rules under this section may include rules providing for the manner in which or the matters by reference to which (or both) a determination is to be made of any issue as to whether a financial interest or interests is or are significant for the purposes of the provisions of Irish market abuse law implementing Article 5(1) of Commission Directive No. 2003/125/EC of 22 December 2003.

(4) Rules under this section may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient.

(5) Rules under this section shall not contain any provision that is inconsistent with Irish market abuse law or require the provision of information to any person the provision of which is not reasonably related to the purposes for which the applicable provisions of the 2003 Market Abuse Directive or the supplemental Directives have been adopted.

(6) The provisions of Irish market abuse law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of rules under this section as they apply in relation to a contravention of a provision of Irish market abuse law and, accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish market abuse law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules under this section.

(7) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with Irish market abuse law.

Amendment of section 33AJ of Central Bank Act 1942.

**35**.—Section 33AJ (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) of the Central Bank Act 1942 is amended by substituting the following subsection for subsection (7):

> "(7) In this section, 'agent' includes a person appointed or authorised by the Bank, the Governor or the Chief Executive to perform any function or exercise a power under the Central Bank Acts or any other enactment.".

Amendment of section 33AK of Central Bank Act 1942.

**36**.—The definition of "Supervisory Directives" in subsection (10) of section 33AK (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) of the Central Bank Act 1942 is amended by substituting the following paragraphs for paragraph (*e*):

> "(*e*) Council Directive 92/96/EEC of 10 November 1992[7],
>
> (*f*) the 2003 Market Abuse Directive (within the meaning of *Part 4* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005*),
>
> (*g*) the supplemental Directives (within the meaning of that *Part 4*),
>
> (*h*) the 2003 Prospectus Directive (within the meaning of *Part 5* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005*);".

Application of Irish market abuse law to certain markets.

**37**.—(1) The Minister, after consultation with the competent authority designated under Irish market abuse law, may, by provisional order, provide that one or more provisions of Irish market abuse law that apply in relation to a market to which the 2003 Market Abuse Directive applies shall, with such modifications, if any, as are specified in the order, apply to a market specified in the order.

(2) The Minister may, by provisional order, amend or revoke a provisional order under this section (including a provisional order under this subsection).

(3) A provisional order under this section shall not have effect unless or until it is confirmed by an Act of the Oireachtas.

## PART 5

### Public Offers of Securities

Interpretation (*Part 5*).

**38**.—(1) In this Part, unless the context otherwise requires—

"2003 Prospectus Directive" means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003[8], including that Directive as it stands amended for the time being;

[7]OJ L360, 9.12.1992, p. 1
[8]OJ L345, 31.12.2003, p. 64

"body corporate" includes a company;

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as amended for the time being;

"EU prospectus law" means—

(*a*) the measures adopted for the time being by a Member State (including the State) or a Member State of the EEA to implement the 2003 Prospectus Directive,

(*b*) any measures directly applicable in consequence of the 2003 Prospectus Directive and, without prejudice to the generality of this paragraph, includes the Prospectus Regulation, and

(*c*) any supplementary and consequential measures adopted for the time being by a Member State (including the State) or a Member State of the EEA in respect of the Prospectus Regulation;

"expert", save where a different construction in respect of that expression applies for the purposes of this Part by virtue of Irish prospectus law, includes engineer, valuer, accountant and any other individual or body (whether incorporated or unincorporated) the profession of whom, or the profession of members, officers or employees of which, gives authority to a statement made by the individual or body;

"Irish prospectus law" means—

(*a*) the measures adopted for the time being by the State to implement the 2003 Prospectus Directive (whether an Act of the Oireachtas, regulations under section 3 of the European Communities Act 1972, regulations under *section 46* or any other enactment (other than, save where the context otherwise admits, this Part)),

(*b*) any measures directly applicable in the State in consequence of the 2003 Prospectus Directive and, without prejudice to the generality of this paragraph, includes the Prospectus Regulation, and

(*c*) any supplementary and consequential measures adopted for the time being by the State in respect of the Prospectus Regulation;

"issuer" means a body corporate or other legal entity which issues or proposes to issue securities;

"local offer" means an offer of securities to the public in the State where—

(*a*) the offer expressly limits the amount of the total consideration for the offer to less than €2,500,000 (and the means by which that limit shall be calculated, in particular in the case of a series of such offers of securities, shall be the same as that provided for by regulations under *section 46* in relation to analogous limits specified by those regulations for any purpose),

(*b*) the securities are other than those referred to in any of paragraphs (a) to (g) or paragraph (i) or (j) of Article 1(2) of the 2003 Prospectus Directive, and

(*c*) the offer is not of a kind described in Article 3(2) of the 2003 Prospectus Directive;

“Member State of the EEA” means a state that is a contracting party to the EEA Agreement;

“offer of securities to the public” has the same meaning as it has in Irish prospectus law;

“offering document” means a document prepared for a local offer which document, if prepared in connection with an offer to which the 2003 Prospectus Directive applies, would be a prospectus;

“offeror” means a body corporate or other legal entity or an individual which or who offers securities to the public;

“promoter” means, subject to *subsection (5)*, a promoter who was a party to the preparation of a prospectus, or of the portion thereof containing an untrue statement;

“prospectus” means a document or documents in such form and containing such information as may be required by or under this Part or EU prospectus law, howsoever the document or documents are constituted, but does not include any advertisements in newspapers or journals derived from the foregoing;

“Prospectus Regulation” means Commission Regulation (EC) No. 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements[9];

“securities” has the same meaning as it has in Irish prospectus law, and includes shares and debentures of a company.

(2) A word or expression that is used in this Part and is also used in the 2003 Prospectus Directive shall have in this Part the same meaning as it has in that Directive, unless—

(*a*) the contrary intention appears, or

(*b*) Irish prospectus law provides otherwise.

(3) For the purposes of this Part—

(*a*) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included, and

(*b*) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.

(4) Nothing in this Part shall limit or diminish any liability which any person may incur under the general law.

[9]OJ L149, 30.4.2004, p. 1

(5) For the purposes of *sections 41* and *43*, the following persons shall be deemed not to be a promoter or a person who has authorised the issue of the prospectus—

(*a*) a professional adviser to any person referred to in *section 41* acting as such;

(*b*) an underwriter or professional adviser to an underwriter acting as such.

(6) The person referred to as the "purchaser" in the following case shall be deemed to be an underwriter for the purposes of *subsection (5)(b)*.

(7) That case is one in which—

(*a*) a person (the "offeror") intends to make an offer of securities to the public, and

(*b*) another person (the "purchaser")—

(i) agrees to purchase those securities with the intention of their immediate resale to give effect to that intention of the offeror, at a profit or subject to payment by the offeror to the purchaser of a commission, and

(ii) binds himself or herself to purchase, or procure the purchase of, any of the securities not so resold.

Construction of certain terms in Act of 1963.

**39**.—(1) A word or expression that is used in a provision inserted in the Act of 1963 by this Part, or in a provision of that Act amended by this Part, and which is also used in this Part shall have in that provision, as so inserted or amended, the same meaning as it has in this Part.

(2) This section does not limit the generality of *section 1(2)*.

Repeal of certain provisions of Act of 1963 and revocation.

**40**.—(1) The following are repealed:

(*a*) sections 43 to 47, 49 to 52, 54, 56 and 59, subsections (15B) and (15C) of section 60 and sections 61 and 361 to 367 of the Act of 1963, and

(*b*) the Third and Fourth Schedules to the Act of 1963.

(2) The Companies (Recognition of Countries) Order 1964 (S.I. No. 42 of 1964) is revoked to the extent that it is for the purposes of section 367 of the Act of 1963.

Civil liability for misstatements in prospectus.

**41**.—Subject to *sections 42* and *43*, the following persons shall be liable to pay compensation to all persons who acquire any securities on the faith of a prospectus for the loss or damage they may have sustained by reason of—

(*a*) any untrue statement included therein, or

(*b*) any omission of information required by EU prospectus law to be contained in the prospectus,

namely—

(i) the issuer who has issued the prospectus or on whose behalf the prospectus has been issued,

(ii) the offeror of securities to which the prospectus relates,

(iii) every person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market,

(iv) the guarantor of the issue of securities to which the prospectus relates,

(v) every person who is a director of the issuer at the time of the issue of the prospectus,

(vi) every person who has authorised himself or herself to be named and is named in the prospectus as a director of the issuer or as having agreed to become such a director either immediately or after an interval of time,

(vii) every person being a promoter of the issuer,

(viii) every person who has authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law).

*Section 41*: exceptions and exemptions.

**42**.—(1) Where the consent of an expert is required to the issue of a prospectus by *section 45* and he or she has given that consent, the expert shall not by reason of his or her having given it be liable under *section 41* as a person who has authorised the issue of the prospectus except in respect of an untrue statement purporting to be made by him or her as an expert.

(2) A person shall not be liable under *section 41* solely on the basis of a summary of a prospectus, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with other parts of the prospectus.

(3) Subject to *subsection (5)*, a person shall not be liable under *section 41* if he or she proves—

(*a*) that, having consented to become a director of the issuer, he or she withdrew, in writing, his or her consent before the issue of the prospectus, and that it was issued without his or her authority or consent, or

(*b*) that the prospectus was issued without his or her knowledge or consent, and that on becoming aware of its issue he or she forthwith gave reasonable public notice that it was issued without his or her knowledge or consent, or

(*c*) that after the issue of the prospectus and before the acquisition of securities thereunder by the person referred to in *section 41*, he or she, on becoming aware of any untrue statement therein or omission of material information required by EU prospectus law to be contained therein, withdrew, in writing, his or her consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor, or

(*d*) that—

(i) as regards—

(I) every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement,

(II) the omission from the prospectus of any information required by EU prospectus law to be contained therein,

he or she had reasonable grounds to believe, and did up to the time of the issue of the securities, believe, that the statement was true or that the matter whose omission caused loss was properly omitted, and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he or she had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that that person had given his or her consent to the issue of the prospectus and had not withdrawn, in writing, that consent before the publication of the prospectus or, to the defendant's knowledge, before issue of securities thereunder, and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(4) In *subsections (5)* and *(6)* "by reason of the relevant consent", in relation to an expert, means by reason of his or her having given the consent required of him or her by *section 45* to the issue of the prospectus concerned.

(5) *Subsection (3)* shall not apply in the case of an expert, by reason of the relevant consent, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him or her as an expert.

(6) An expert who, apart from this subsection, would under *section 41* be liable, by reason of the relevant consent, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him or her as an expert shall not be so liable if he or she proves—

(*a*) that, having given his or her consent to the issue of the prospectus, he or she withdrew it in writing before publication of the prospectus, or

(*b*) that, after publication of the prospectus and before the acquisition of securities thereunder by the person referred to in *section 41* on becoming aware of the untrue statement, withdrew his or her consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor, or

(*c*) that he or she was competent to make the statement and that he or she had reasonable grounds to believe and did up to the time of such acquisition of the securities believe that the statement was true.

Restriction of liability where non-equity securities solely involved.

**43**.—Where a prospectus is issued solely in respect of non-equity securities—

(*a*) only the offeror or the person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market and the guarantor (if any) and no other person referred to in *section 41* shall be liable under that section in the circumstances in which that section applies unless—

(i) the prospectus expressly provides otherwise, or

(ii) that other such person is convicted on indictment of an offence created by Irish prospectus law or an offence under *section 48* in respect of the issue of that prospectus,

and

(*b*) section 383(3) of the Act of 1963 shall not apply to the directors or secretary of the issuer to the extent that such application would thereby impose a liability under *section 41* on such directors or secretary.

Indemnification of certain persons.

**44**.—(1) This section applies where—

(*a*) a prospectus contains the name of a person as a director of the issuer, or as having agreed to become a director thereof, and he or she has not consented to become a director, or has withdrawn, in writing, his or her consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, or

(*b*) the consent of an expert is required by *section 45* to the issue of a prospectus and he or she either has not given that consent or has withdrawn, in writing, that consent before the issue of the prospectus.

(2) The directors of the issuer, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable to indemnify the person named as mentioned in *subsection (1)* or whose consent was required as so mentioned, as the case may be, against all damages, costs and expenses to which he or she may be made liable by reason of his or her name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him or her as an expert, as the case may be, or in defending himself or herself against any action or legal proceeding brought against him or her in respect thereof.

(3) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his or her having given the consent required by *section 45* to the inclusion therein of a statement purporting to be made by him or her as an expert.

Expert's consent to issue of prospectus containing statement by him or her.

**45**.—(1) A prospectus including a statement purporting to be made by an expert shall not be issued unless—

(*a*) the expert has given and has not, before publication of the prospectus, withdrawn, in writing, his or her consent to the issue thereof with the statement included in the form and context in which it is included, and

(*b*) to the extent that the inclusion in the prospectus of the following is required by EU prospectus law, a statement that the expert has given and has not withdrawn, in writing, that consent appears in the prospectus.

(2) If any prospectus is issued in contravention of this section the issuer and every person who is knowingly a party to the issue thereof shall be guilty of an offence and liable to a fine.

Regulations (*Part 5*).

**46**.—(1) The Minister may make regulations for the purposes of—

(*a*) giving effect to the 2003 Prospectus Directive, and

(*b*) supplementing and making consequential provision in respect of the Prospectus Regulation.

(2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations, including—

(*a*) provisions creating offences (but the regulations may only provide penalties in respect of a summary conviction for any such offence), and

(*b*) provisions revoking instruments made under other enactments.

(3) This section is without prejudice to section 3 of the European Communities Act 1972.

Penalties on conviction on indictment and defences in respect of certain offences.

**47**.—(1) A person who is guilty of an offence created by Irish prospectus law (being an offence expressed by that law to be an offence to which this section applies) shall, without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, be liable, on conviction on indictment, to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 5 years or both.

(2) In proceedings for an offence created by Irish prospectus law, it shall be a defence for the defendant to prove—

(*a*) as regards any matter not disclosed in the prospectus concerned, that he or she did not know it, or

(*b*) the contravention arose from an honest mistake of fact on his or her part, or

(*c*) the contravention was in respect of matters which, having regard to the circumstances of the case, was immaterial or as respects which, having regard to those circumstances, he or she ought otherwise reasonably to be excused.

Untrue statements and omissions in prospectus: criminal liability.

**48**.—(1) Where a prospectus is issued and—

(*a*) includes any untrue statement, or

(*b*) omits any information required by EU prospectus law to be contained in it,

any person who authorised the issue of the prospectus (not being the competent authority designated under Irish prospectus law) shall be guilty of an offence unless he or she proves—

(i) as regards an untrue statement, either that the statement was, having regard to the circumstances of the case, immaterial or that he or she honestly believed and did, up to the time of the issue of the prospectus, believe that the statement was true, or

(ii) as regards any information omitted, either that the omission was, having regard to the circumstances of the case, immaterial or that he or she did not know it, or

(iii) that the making of the statement or omission was otherwise such as, having regard to the circumstances of the case, ought reasonably to be excused.

(2) A person guilty of an offence under this section shall be liable—

(*a*) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months, or

(*b*) on conviction on indictment, to a fine not exceeding €1,000,000 or imprisonment for a term not exceeding 5 years or both.

(3) Summary proceedings for an offence under this section may be brought and prosecuted by the competent authority designated under Irish prospectus law.

(4) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his or her being an expert having given the consent required by *section 45* to the inclusion therein of a statement purporting to be made by him or her as an expert.

(5) If at a trial for an offence under this section or an offence created by Irish prospectus law, the judge or jury has to consider whether the defendant honestly believed a particular thing or was honestly mistaken in relation to a particular thing, the presence or absence of reasonable grounds for such a belief or for his or her having been so mistaken is a matter to which the judge or jury is to have regard, in conjunction with any other relevant matters, in considering whether the defendant so believed or was so mistaken.

Local offers.

**49**.—(1) An offering document prepared for a local offer shall contain the following statements in print in clearly legible type:

(*a*) on the front page or otherwise in a prominent position:

"This document,

—has not been prepared in accordance with Directive 2003/71/EC on prospectuses or any measures made under that Directive or the laws of Ireland or of any EU Member State or EEA treaty adherent state that implement that Directive or those measures,

—has not been reviewed, prior to its being issued, by any regulatory authority in Ireland or in any other EU Member State or EEA treaty adherent state,

and therefore may not contain all the information required where a document is prepared pursuant to that Directive or those laws.",

(*b*) elsewhere in the offering document:

(i) where the offering document contains information on past performance:

"*Past performance may not be a reliable guide to future performance.*",

(ii) where the offering document contains information on simulated performance:

"*Simulated performance may not be a reliable guide to future performance.*",

(iii) "*Investments may fall as well as rise in value.*",

(iv) where securities are described as being likely to yield income or as being suitable for an investor particularly seeking income from his or her investment, and where the income from the securities can fluctuate:

"*Income may fluctuate in accordance with market conditions and taxation arrangements.*",

(v) where the primary market for the securities or the currency of the underlying business is in a currency other than euro:

"*Changes in exchange rates may have an adverse effect on the value, price or income of the securities.*",

(vi) where the securities do not constitute a readily realisable investment:

"*It may be difficult for investors to sell or realise the securities and/or obtain reliable information about their value or the extent of the risks to which they are exposed.*".

(2) Any requirement of *subsection (1)* as to the inclusion of a particular statement in an offering document shall be regarded as satisfied if words substantially to the effect of that statement are instead included in that document.

(3) If an offeror fails to comply with *subsection (1)* the offeror shall be guilty of an offence.

(4) No offering document prepared for a local offer shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, a copy of the offering document has been delivered to the registrar of companies for registration.

(5) Summary proceedings for an offence under this section may be brought and prosecuted by the competent authority designated under Irish prospectus law or by the registrar of companies.

Exclusion of Investment Intermediaries Act 1995.

**50**.—(1) Any document issued in connection with an offer of securities by or on behalf of an issuer, offeror or person seeking admission of securities to trading on a regulated market shall not be regarded as constituting an investment advertisement within the meaning of section 23 of the Investment Intermediaries Act 1995.

(2) "Document" in *subsection (1)* includes, in the case of a local offer, an offering document.

Power to make certain rules and issue guidelines.

**51**.—(1) In this section "competent authority" means the competent authority designated under Irish prospectus law.

(2) The competent authority may make rules imposing or enabling the competent authority to impose requirements on persons on whom an obligation or obligations are imposed by Irish prospectus law, being requirements—

(*a*) to do or not to do specified things so as to secure that the provisions of Irish prospectus law are complied with and, in particular (without limiting the generality of this paragraph), to adopt specified procedures and use specified forms in the provision of information to the competent authority,

(*b*) to do or not to do specified things so as to secure the effective supervision by the competent authority of activities of the kind to which Irish prospectus law relates and, in particular (without limiting the generality of this paragraph), to make such reports or disclose such matters, at such times and in such manner, to the competent authority or other specified persons as are provided for by the rules or specified by the competent authority pursuant to the rules, being reports or a disclosure of matters that is or are required by virtue or in consequence of the operation of Irish prospectus law.

(3) Rules under this section may include rules providing for the manner in which or the matters by reference to which (or both) a determination is to be made of any issue as to whether a transaction or transactions is or are of a significant size for the purposes of the provisions of Irish prospectus law implementing Article 2(2)(a) of the 2003 Prospectus Directive.

(4) The reference in *subsection (2)* to an obligation imposed on a person by Irish prospectus law includes a reference to an obligation imposed on a person by virtue of the person's exercising a right or option provided under Irish prospectus law.

(5) Rules under this section may contain such consequential, incidental or supplemental provisions as the competent authority considers necessary or expedient.

(6) Rules under this section shall not contain any provision that is inconsistent with Irish prospectus law or require the provision of information to any person the provision of which is not reasonably related to the purposes for which the applicable provisions of the 2003 Prospectus Directive have been adopted.

(7) The provisions of Irish prospectus law that are expressed by that law to be made for the purpose of enabling the imposition of administrative sanctions shall apply in relation to a contravention of rules under this section as they apply in relation to a contravention of a provision of Irish prospectus law and, accordingly, a sanction that may be imposed pursuant to the first-mentioned provisions of Irish prospectus law in respect of a contravention of a provision of that law may, in accordance with that law, be imposed in respect of a contravention of rules under this section.

(8) The competent authority may issue guidelines in writing as to the steps that may be taken to comply with Irish prospectus law.

Avoidance of certain agreements.

**52**.—A condition—

(*a*) requiring or binding an applicant for securities to waive compliance with any requirement of—

(i) this Part, or

(ii) EU prospectus law,

or

(*b*) where EU prospectus law applies, purporting to affect him or her with notice of any contract, document or matter not specifically referred to in the prospectus concerned,

shall be void.

Amendment of section 53 of Act of 1963.

**53**.—Section 53 of the Act of 1963 is amended by substituting the following subsection for subsection (1):

"(1) Where a prospectus states the minimum amount which, in the opinion of the directors, must be raised from an issue of shares and that no allotment shall be made of any of those shares unless that minimum amount has been subscribed and the sum payable on application for the amount so stated has been paid up, then no such allotment shall be made unless that minimum amount has been subscribed and the said sum so payable has been paid up.".

Amendment of section 55 of Act of 1963.

**54**.—Section 55 of the Act of 1963 is amended—

(*a*) in subsection (1), by deleting "or 54", and

(*b*) in subsection (3), by substituting "section 53" for "the said sections 53 and 54".

Amendment of section 57 of Act of 1963.

**55**.—Section 57 of the Act of 1963 is amended—

(*a*) by substituting for "shares or debentures" in each place where those words occur, "securities",

(*b*) in subsection (1), by inserting after "stock exchange" "or regulated market", and

(*c*) by adding the following subsection:

"(7) The provisions of this section shall not apply in relation to an allotment of non-equity securities.".

## PART 6

### Miscellaneous Company Law Amendments

Amendment of section 60 of Act of 1963.

**56**.—(1) Section 60 of the Act of 1963 is amended by substituting the following subsections for subsections (12) and (13):

"(12) Nothing in this section shall be taken to prohibit—

(*a*) the payment by a company of a dividend or making by it of any distribution out of profits of the company available for distribution;

(*b*) the discharge by a company of a liability lawfully incurred by it;

(*c*) the provision of finance or delivery of security to discharge, or effect what is commonly known as refinancing of, an existing loan or other liability or security in relation to that existing loan where the incurring of the existing loan or liability or the delivery of the existing security had occurred under the authority of a special resolution of the company passed in accordance with subsection (2);

(*d*) subject to subsection (13), where the lending of money is part of the ordinary business of the company, the lending of money by a company in the ordinary course of its business;

(*e*) subject to subsection (13), the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid shares in the company or its holding company, being a purchase or subscription of or for shares to be held by or for the benefit of employees or former employees of the company or of any subsidiary of the company including any person who is or was a director holding a salaried employment or office in the company or any subsidiary of the company;

(*f*) subject to subsection (13), the making by a company of loans to persons, other than directors, bona fide in the employment of the company or any subsidiary of the company with a view to enabling those persons to purchase or subscribe for fully paid shares in the company or its holding company to be held by themselves as beneficial owners thereof;

(*g*) the making or giving by a company of one or more representations, warranties or indemnities to a person who has purchased or subscribed for, or proposes to purchase or subscribe for, shares in the company or its holding company for the purpose of or in connection with that purchase or subscription;

(*h*) the payment by a company of fees and expenses of the advisers of any subscriber for shares in the company or its holding company that are incurred in connection with that subscription;

(i) the incurring of expenses (including professional fees and expenses) by a company either or both—

(i) in the preparation and publication of a prospectus concerning any shares in the company or its holding company,

(ii) for the purpose of facilitating the admission of any shares in the company or its holding company to, or the continuance of a facility afforded to the company or its holding company for the trading of such shares on, a regulated market;

(*j*) the incurring of expenses by a company for the purpose of facilitating the admission of any shares in the company or its holding company to, or the continuance of a facility afforded to the company or its holding company for the trading of such shares on, a regulated market or other securities market (including the expense of preparation and publication of any documents required for that purpose by the laws of the jurisdiction in which that market is established);

(*k*) the incurring of any expenses by a company in order to ensure compliance by the company or its holding company with the Irish Takeover Panel Act 1997 or an instrument thereunder or any measures for the time being adopted by the State to implement Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids[10];

(*l*) the reimbursement by a company which is an offeree (within the meaning of the Irish Takeover Panel Act 1997) or by a subsidiary of such an offeree of expenses of an offeror (within the meaning of that Act) pursuant to an agreement approved by, or on terms approved by, the Irish Takeover Panel;

(*m*) in connection with an allotment of shares by a company or its holding company, the payment by the company of commissions not exceeding 10 per cent of the money received in respect of such allotment to intermediaries, and the payment by the company of professional fees;

(*n*) to the extent that provision of this kind is not authorised by paragraph (*e*) or (*f*), the provision of financial assistance by a holding company or a subsidiary of it

[10]OJ L142, 30.4.2004, p. 12

in connection with the holding company or subsidiary purchasing or subscribing for shares in the holding company on behalf of—

(i) the present or former employees of the holding company or any subsidiary of it,

(ii) an employees' share scheme within the meaning of the Companies (Amendment) Act 1983, or

(iii) an employee share ownership trust referred to in section 519 of the Taxes Consolidation Act 1997.

(13) (*a*) A public limited company may, in accordance with paragraph (*d*), (*e*) or (*f*) of subsection (12), give financial assistance to any person only if the company's net assets are not thereby reduced or, to the extent that those assets are thereby reduced, if the financial assistance is provided out of profits which are available for dividend.

(*b*) In this section 'net assets' means the aggregate of the company's assets less the aggregate of its liabilities; and 'liabilities' includes any provision (within the meaning of the Schedule to the Companies (Amendment) Act 1986) except to the extent that that provision is taken into account in calculating the value of any asset to the company.".

(2) *Section 39* applies to the construction of a word or expression used in the provisions inserted in the Act of 1963 by *subsection (1)* as it applies to the construction of a word or expression used in the provisions inserted in the Act of 1963 by *Part 5*.

Electronic filing agents.

**57**.—(1) A company may authorise a person (who shall be known and is in this Act referred to as an "electronic filing agent") to do the following acts on its behalf.

(2) Those acts are—

(*a*) the electronic signing of documents that are required or authorised, by or under the Companies Acts or any other enactment, to be delivered by the company to the registrar of companies, and

(*b*) the delivery to the registrar of companies, by electronic means, of those documents so signed.

(3) Subject to the following conditions being complied with, an act of the foregoing kind done by such an agent on behalf of a company pursuant to an authorisation by the company under this section that is in force shall be as valid in law as if it had been done by the company (and the requirements of the Companies Acts or the other enactment concerned with respect to the doing of the act have otherwise been complied with (such as with regard to the period within which the act is to be done)).

(4) The conditions mentioned in *subsection (3)* are—

(*a*) that prior to the first instance of the electronic filing agent's doing of an act of the kind referred to in *subsection (2)*, pursuant to an authorisation by the company concerned under this section, the authorisation of the agent has been notified by the company to the registrar of companies in the prescribed form, and

(*b*) the doing of the act complies with any requirements of the registrar of companies of the kind referred to in sections 12(2)(*b*) and 13(2)(*a*) of the Electronic Commerce Act 2000.

(5) It shall be the joint responsibility of a company and the electronic filing agent authorised by it under this section to manage the control of the documents referred to in *subsection (2)*.

(6) An electronic filing agent shall not, by virtue of his or her authorisation under this section to act as such, be regarded as an officer or servant of the company concerned for the purposes of section 187(2)(*a*) of the Act of 1990.

*Section 57*: supplemental provisions.

**58**.—(1) A company may revoke an authorisation by it under *section 57* of an electronic filing agent.

(2) Such a revocation by a company shall be notified by it, in the prescribed form, to the registrar of companies.

(3) Unless and until the revocation is so notified to the registrar of companies, the authorisation concerned shall be deemed to subsist and, accordingly, to be still in force for the purposes of *section 57(3)*.

(4) If a revocation, in accordance with this section, of an authorisation under *section 57* constitutes a breach of contract or otherwise gives rise to a liability being incurred—

(*a*) the fact that it constitutes such a breach or otherwise gives rise to a liability being incurred does not affect the validity of the revocation for the purposes of *section 57*, and

(*b*) the fact of the revocation being so valid does not remove or otherwise affect any cause of action in respect of that breach or the incurring of that liability.

Reservation of company name.

**59**.—(1) In this section—

"reserved" means reserved under *subsection (4)* for the purpose mentioned in *subsection (3)*;

"specified period" means the period specified in the relevant notification made by the registrar of companies under *subsection (5)*.

(2) During the specified period and any extension under *section 60* of that period a company shall not be incorporated with a particular reserved name save on the application of the person in whose favour that name has been reserved.

(3) A person may apply to the registrar of companies to reserve a specified name for the following purpose, namely, the purpose of a company that is proposed to be formed by that person being incorporated with that name; such an application shall be accompanied by the prescribed fee.

(4) On the making of such an application, the registrar of companies may, subject to *subsection (6)*, determine that the name specified in the application shall be reserved for the purpose mentioned in *subsection (3)*.

(5) That determination shall be notified to the applicant by the registrar of companies and that notification shall specify the period (which shall not be greater than 28 days and which shall be expressed to begin on the making of the notification) for which the name is reserved.

(6) A name shall not be reserved that, in the opinion of the registrar of companies, is undesirable.

*Section 59*: supplemental provisions.

**60**.—(1) A person in whose favour a name has been reserved under *section 59* may, before the expiry of the specified period, apply to the registrar of companies for an extension of the specified period; such an application shall be accompanied by the prescribed fee.

(2) On the making of such an application, the registrar of companies may, if he or she considers it appropriate to do so, extend the specified period for such number of days (not exceeding 28 days) as the registrar determines and specifies in a notification of the determination to the applicant.

(3) If an application for incorporation of a company with a name that has been reserved under *section 59* is received by the registrar of companies during the specified period from the person in whose favour the name has been so reserved, the fee payable to the registrar in respect of that incorporation shall be reduced by an amount equal to the amount of the fee paid under *section 59(3)* in respect of the reservation of that name.

(4) In this section "specified period" has the same meaning as it has in *section 59*.

Amendment of section 128 of Act of 1963.

**61**.—Section 128 of the Act of 1963 (as amended by the Companies (Auditing and Accounting) Act 2003) is amended, in subsection (6B)(*b*), by inserting, after "section 193", "of the Act of 1990".

Amendment of section 195 of Act of 1963.

**62**.—Section 195 of the Act of 1963 (inserted by the Act of 1990) is amended by inserting the following subsection after subsection (6):

"(6A) In the case of a person who is a director of more than one company (the 'relevant companies') the following provisions apply—

(*a*) the person may send a notification in the prescribed form to the registrar of companies of a change in his or her usual residential address or of a change in his or her name and (in each case) of the date on which the change occurred,

(*b*) if such a notification is sent to the registrar and the relevant companies are listed in the notification as being companies of which the person is a director—

(i) each of the relevant companies shall be relieved, as respects, and only as respects, that particular change or, as the case may be, those particular

changes, of the obligation under subsection (6) to send a notification of it or them to the registrar, and

(ii) the registrar may proceed to record the relevant change or changes concerning the person in relation to each of the relevant companies.”.

Amendment of section 302(1) of Act of 1963.

**63**.—Section 302(1) of the Act of 1963 is amended by inserting after “notice requiring him to do so” “or such greater period as may be specified in the notice”.

Amendment of section 371(1) of Act of 1963.

**64**.—Section 371(1) of the Act of 1963 is amended by inserting after “notice on the company or officer requiring it or him to do so” “or such greater period as may be specified in the notice”.

Amendment of section 12B of Companies (Amendment) Act 1982.

**65**.—Section 12B of the Companies (Amendment) Act 1982 (inserted by the Companies (Amendment) (No. 2) Act 1999) is amended by inserting the following subsection after subsection (8):

“(8A) For the purposes of subsection (1) of section 12 of this Act where—

(*a*) a company does not, for 20 or more consecutive years, make an annual return required by section 125 of the Principal Act, and

(*b*) no notice of the situation of the registered office of the company has been given to the registrar of companies as required by section 113 of the Principal Act,

the registrar of companies may, instead of sending, in accordance with the said subsection (1), a registered letter to the company stating that he proposes to take the course of action mentioned in that subsection in relation to the company, publish a notice in the Companies Registration Office Gazette stating that he proposes to take that course of action in relation to the company, and where the registrar publishes such a notice the reference in subsection (2) of section 12 of this Act to the sending of a letter of the foregoing kind shall be construed as a reference to the publishing of that notice.”.

Amendment of section 22 of Companies (Amendment) Act 1986.

**66**.—Section 22 of the Companies (Amendment) Act 1986 is amended—

(*a*) in subsection (1)—

(i) in paragraph (*a*), by substituting “shall be guilty of an offence” for “shall be liable on summary conviction to a fine not exceeding £1,000”, and

(ii) in paragraph (*b*), by substituting “Summary proceedings” for “Proceedings”,

and

(*b*) in subsection (2), by substituting “in respect of each such failure be guilty of an offence, but—” for “in respect of

each offence be liable on summary conviction to imprisonment for a term not exceeding 6 months, or, at the discretion of the court to a fine not exceeding £1,000 or to both so, however, that—".

Amendment of section 19 of Act of 1990.

**67**.—Section 19(2) of the Act of 1990 is amended—

(*a*) by inserting the following after paragraph (*d*):

"(*da*) the affairs of the body are being or have been conducted in a manner which is unfairly prejudicial to some or all of its creditors;",

(*b*) in paragraph (*e*), by substituting for "are or would be" "have been, are or would be", and

(*c*) in paragraph (*f*), by substituting for "are or are likely" "have been, are or are likely".

Amendment of section 20 of Act of 1990.

**68**.—(1) Subsection (3) of section 20 of the Act of 1990 is repealed.

(2) Notwithstanding the repeal by this section of subsection (3) of that section 20, that subsection (3) shall continue to apply to material information (within the meaning of that section 20) seized under that section before the commencement of this section.

Amendment of section 21 of Act of 1990.

**69**.—Section 21(3) of the Act of 1990 is amended by inserting the following after paragraph (*e*):

"(*ea*) the Irish Auditing and Accounting Supervisory Authority,".

Amendment of section 166 of Act of 1990.

**70**.—Section 166 of the Act of 1990 is amended—

(*a*) by substituting the following subsection for subsection (1):

"(1) Where—

(*a*) a director of a company is charged with an offence or civil proceedings are instituted against such a director, and

(*b*) the charge or proceedings relate to the company or involve alleged fraud or dishonesty,

the court before which the proceedings consequent on that charge or those civil proceedings are pending may (either of its own motion or at the request of any of the parties to the proceedings), if satisfied that it is appropriate to do so, require the director to lodge with the office of the court a notice in writing—

(i) giving the names of all companies of which he is a director at the date of the notice,

(ii) giving the names of all companies of which he was a director within a period commencing not earlier than 12 months prior to his being

charged with the offence or the commencement of the civil proceedings and ending at the date of the notice,

(iii) stating whether he is at the date of the notice or ever was subject or deemed to be subject to a disqualification order, and

(iv) giving the dates and duration of each period in respect of which he is or was disqualified.”,

and

(*b*) by repealing subsection (3).

Amendment of section 242 of Act of 1990.

**71**.—Section 242 of the Act of 1990 is amended—

(*a*) in subsection (1), by inserting before “produces, lodges or delivers”, in each place where those words occur, “completes, signs”,

(*b*) by inserting the following subsection after subsection (1):

“(1A) A person who knowingly or recklessly furnishes false information to an electronic filing agent that is subsequently transmitted in a return made, on the person’s behalf, to the registrar of companies shall be guilty of an offence.”,

and

(*c*) in subsection (2), by inserting after “subsection (1)” “or (1A)”.

Replacement of references to Companies Registration Office Gazette for references to *Iris Oifigiúil*.

**72**.—Each enactment mentioned in column (2) of the Table to this section at a particular reference number is amended, in each provision of that enactment mentioned in column (3) of that Table at that reference number, by substituting for “*Iris Oifigiúil*” “the Companies Registration Office Gazette”.

TABLE

| Reference Number (1) | Enactment (2) | Provision (3) |
|---|---|---|
| 1. | Companies Act 1963 | Sections 65(1)(*e*), 107(1), 227(1), 252(1) and 261(1); Subsections (1), (2), (3), (5) and (8) of section 311 (including those subsections as they have effect by virtue of section 43(15) of the Companies (Amendment) (No.2) Act 1999) and section 311A(1). |
| 2. | Companies (Amendment) Act 1982 | Subsections (1), (2) and (3) of section 12; Subsections (1), (2) and (3) of section 12A; Subsections (3) and (7) of section 12B and section 12C(1). |
| 3. | Companies (Amendment) Act 1983 | Sections 8(1), 23(7) and 55(1). |
| 4. | Companies (Amendment) Act 1990 | Subsection (2)(*a*) and (*b*) of section 12 and section 30(1). |
| 5. | Companies Act 1990 | Section 16(18). |

Miscellaneous amendments of Companies Acts related to penalties.

**73**.—(1) The Act of 1963 is amended—

(*a*) in section 115, by substituting the following subsection for subsection (6):

"(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be guilty of an offence and liable to a fine not exceeding €1,904.61.",

and

(*b*) in section 128(3), by substituting for "shall be liable to a fine" "shall be guilty of an offence and liable to a fine".

(2) The Act of 1990 is amended—

(*a*) in section 60, by substituting the following subsection for subsection (10):

"(10) If default is made in compliance with subsection (9), the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding €1,904.61; and if default is made for 14 days in complying with subsection (6) the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding €1,904.61; and if default is made in complying with section 59 or with subsection (1), (2) or (7) of this section or if an inspection required under this section is refused or any copy required thereunder is not sent within the proper period the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine not exceeding €1,904.61.",

(*b*) in section 80(10), by substituting for "shall be liable to a fine" "shall be guilty of an offence and liable to a fine",

(*c*) in section 161(6), by substituting for "shall be liable to a fine" "shall be guilty of an offence and liable to a fine", and

(*d*) in section 194(5), (inserted by the Company Law Enforcement Act 2001) by inserting "(other than an indictable offence under section 125(2) or 127(12) of the Principal Act)" after "an indictable offence under the Companies Acts".

(3) Paragraph (*d*) of section 37 of the Companies (Auditing and Accounting) Act 2003 is repealed.

(4) Schedule 2 to the Companies (Auditing and Accounting) Act 2003 is amended—

(*a*) in Item No. 1, by deleting in column 2 "115(6)" and "128(4)", and

(*b*) by deleting Items No. 8 and 9.

Amendment of section 110A of Company Law Enforcement Act 2001.

**74**.—Section 110A of the Company Law Enforcement Act 2001 (inserted by the Companies (Auditing and Accounting) Act 2003) is amended—

(*a*) in subsection (1)—

(i) in paragraph (*c*), by deleting "and",

(ii) in paragraph (*d*), by substituting "1999, and" for "1999;", and

(iii) by inserting the following after paragraph (*d*):

"(*e*) in respect of functions that, under the Companies Acts, are to be performed by the Central Bank and Financial Services Authority of Ireland—

(i) the Chief Executive of the Irish Financial Services Regulatory Authority, or

(ii) a person appointed by some other person to whom the Chief Executive of the Irish Financial Services Regulatory Authority has delegated responsibility for appointing persons for the purposes of this section;",

(*b*) by inserting the following after subsection 8:

"(8A) A document purporting to be a copy of, or extract from, any document kept by the Central Bank and Financial Services Authority of Ireland and that is certified by—

(*a*) the Chief Executive of the Irish Financial Services Regulatory Authority, or

(*b*) any person authorised by the Chief Executive of the Irish Financial Services Regulatory Authority,

to be a true copy of, or extract from, the document so kept is, without proof of the official position of the person purporting to so certify, admissible in evidence in all legal proceedings as of equal validity with the document so kept.".

## PART 7

### Miscellaneous Amendments

Amendment of Irish Takeover Panel Act 1997.

**75**.—The Irish Takeover Panel Act 1997 is amended—

(*a*) in section 2—

(i) in paragraph (ii), by substituting "Act of 1990," for "Act of 1990.", and

(ii) by adding the following paragraph after paragraph (ii):

"(iii) a public limited company or other body corporate incorporated in the State—

(I) the only securities of which for the time being are authorised (or during the period of 5 years referred to in paragraph (*b*) were authorised) to be traded by a recognised stock exchange on a market regulated by that exchange are those specified in section 2A,

and

(II) which is not a company prescribed for the purposes of paragraph (*c*)."

and

(*b*) by inserting the following section after section 2:

"Securities for the purposes of section 2(iii) and application of that provision.

2A.—(1) The securities referred to in paragraph (iii) of section 2 are debentures or bonds or other securities in the nature of debentures or bonds, by whatever name called, that do not confer voting rights in the company or body corporate referred to in that paragraph or in any other body corporate.

(2) The cases to which paragraph (iii) of section 2 applies include the case where the authorisation for the trading of the securities concerned was given by the recognised stock exchange before the commencement of *section 75* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005.*".

Amendment of section 45 of Competition Act 2002.

**76**.—(1) Subsection (6) of section 45 of the Competition Act 2002 is repealed.

(2) Subsection (7) of that section 45 is amended by substituting "this section" for "subsection (6)".

(3) Notwithstanding the repeal by this section of subsection (6) of that section 45, that subsection (6) shall continue to apply to any books, documents or records seized or obtained under that section before the commencement of this section.

Amendment of UCITS Regulations.

**77**.—(1) The UCITS Regulations are amended in the manner provided for in the *Schedule* to this Act.

(2) In this section "UCITS Regulations" means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003) as amended.

Amendment of section 26 of Prices Act 1958.

**78**.—The Prices Act 1958 (as amended by section 8 of the Prices (Amendment) Act 1972) is amended by substituting the following section for section 26:

"26.—(1) A person who commits or is deemed to have committed an offence under this Act shall be liable—

(*a*) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both, or

(*b*) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 2 years or both.

(2) Where a person is convicted of an offence under this Act and there is a continuation of the offence by the person after his conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable—

(*a*) on summary conviction, to a fine not exceeding €300 or imprisonment for a term not exceeding 6 months or both, or

(*b*) on conviction on indictment, to a fine not exceeding €500 or imprisonment for a term not exceeding 2 years or both.".

Amendment of section 23 of Restrictive Practices Act 1972.

**79**.—The Restrictive Practices Act 1972 (as amended by section 21 of the Restrictive Practices (Amendment) Act 1987) is amended by substituting the following section for section 23:

"23.—(1) A person who is guilty of an offence under this Act for which no special penalty is provided shall be liable—

(*a*) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both, or

(*b*) on conviction on indictment, to a fine not exceeding €60,000 or imprisonment for a term not exceeding 2 years or both.

(2) Where a person is convicted of an offence under this Act and there is a continuation of the offence by the person after his or her conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable—

(*a*) on summary conviction, to a fine not exceeding €300 for each day on which the offence is so continued or imprisonment for a term not exceeding 6 months or both, or

(*b*) on conviction on indictment, to a fine not exceeding €6,000 for each day on which the offence is so continued or imprisonment for a term not exceeding 2 years or both.

(3) Where—

(*a*) a person is convicted of an offence under this Act by reason of the person's failure, neglect or refusal to comply with a provision of an order requiring him or her to perform a specified act within a specified period or before a specified date, and

(*b*) the specified act remains unperformed by the person after the specified period or date,

the person shall be guilty of a further offence on every day on which the act continues to be unperformed after the specified period or date, and for each such offence shall be liable on summary conviction to a fine not exceeding €500 or imprisonment for a term not exceeding 6 months.".

Amendment of section 17 of Consumer Information Act 1978.

**80**.—Section 17(1) of the Consumer Information Act 1978 is amended—

(*a*) in paragraph (*a*) by substituting "€3,000" for "£500", and

(*b*) in paragraph (*b*) by substituting "€60,000" for "£10,000".

Amendment of section 6 of Sale of Goods and Supply of Services Act 1980.

**81**.—Section 6(1) of the Sale of Goods and Supply of Services Act 1980 is amended—

(*a*) in paragraph (*a*) by substituting "€3,000" for "£500", and

(*b*) in paragraph (*b*) by substituting "€60,000" for "£10,000".

Amendment of section 13 of Consumer Credit Act 1995.

**82**.—The Consumer Credit Act 1995 is amended by substituting the following section for section 13:

"13.—(1) A person who is guilty of an offence under this Act shall be liable—

(*a*) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or

(*b*) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 5 years or both.

(2) Where a person is convicted of an offence under this Act and there is a continuation of the offence by the person after his or her conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable—

(*a*) on summary conviction, to a fine not exceeding €1,000, or

(*b*) on conviction on indictment, to a fine not exceeding €10,000.".

Amendment of sections 6 and 7 of Package Holidays and Travel Trade Act 1995.

**83**.—The Package Holidays and Travel Trade Act 1995 is amended—

(*a*) in section 6—

(i) in subsection (1) by substituting "€3,000" for "£1,500", and

(ii) in subsection (2) by substituting "€3,000" for "£1,500" and "€100,000" for "£50,000",

and

(*b*) in section 7(3) by substituting "2 years" for "12 months".

Amendment of section 31 of National Standards Authority of Ireland Act 1996.

**84**.—Section 31 of the National Standards Authority of Ireland Act 1996 is amended by substituting "€3,000" for "£1,500".

Amendment of Industrial and Provident Societies Act 1893.

**85**.—The Industrial and Provident Societies Act 1893 is amended—

(*a*) in section 4(*a*), by substituting "€150,000 or an amount equal to 1 per cent of the total assets of the society, whichever is the greater" for the amount standing specified in that section,

(*b*) in section 25 (as substituted by section 5(1) of the Industrial and Provident Societies (Amendment) Act 1913)—

(i) in subsection (1), by substituting "€15,000" for the amount standing specified in each place where that amount occurs in that subsection, and

(ii) in subsection (3), by substituting "€15,000" for the amount standing specified in that subsection,

(*c*) in section 26(1) (as substituted by section 5(2) of the Industrial and Provident Societies (Amendment) Act 1913), by substituting "the limit specified in section 4(*a*) of this Act" for the amount standing specified in that subsection,

(*d*) in section 27(1), by substituting "€10,000" for the amount standing specified in that subsection, and

(*e*) in Schedule II, in paragraph 5, by substituting "the limit specified in section 4(*a*) of this Act" for the amount standing specified in that paragraph.

Validation.

**86**.—(1) Notwithstanding the repeal of section 35(1)(*i*) of the Credit Union Act 1966 by the Credit Union Act 1997, the specified regulations made under that section continue, and shall be deemed always to have continued, to have full force and effect from the coming into operation of the specified regulations until the passing of this Act.

(2) Nothing in this section shall affect any proceedings commenced in any court concerning the validity of the specified regulations where those proceedings were commenced before the passing of this Act.

(3) In this section "specified regulations" means—

(*a*) the Industrial and Provident Societies (Financial Limits) Regulations 1985 (S.I. No. 392 of 1985), and

(*b*) the Industrial and Provident Societies (Financial Limits) (Amendment) Regulations 1990 (S.I. No. 246 of 1990).

Amendment of section 33AN of, and Schedule 2 to, Central Bank Act 1942.

**87**.—(1) Section 33AN of the Central Bank Act 1942 (inserted by the Central Bank and Financial Services Authority of Ireland Act 2004) is amended by inserting the following definitions after the definition of "contravene":

" 'designated enactment' does not include *Part 4* or *5* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005*;

'designated statutory instrument' does not include the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. - of 2005) or the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. - of 2005);".

(2) Schedule 2 to the Central Bank Act 1942 (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) is amended—

(*a*) in the item relating to the Postal and Telecommunications Services Act 1983, in column 3 of Part 1, by substituting "Sections 67 and 104" for "Section 104",

(*b*) in the item relating to the Dormant Accounts Act 2001, in column 3 of Part 1, by substituting "The whole Act" for "Part 3 and section 17",

(*c*) by inserting in Part 1 the following item after the item relating to the Assets Covered Securities Act 2001:

"

| | | |
|---|---|---|
| No. 28 of 2001 | Company Law Enforcement Act 2001 | Section 110A |
| No. 2 of 2003 | Unclaimed Life Assurance Policies Act 2003 | The whole Act |
| No.- of 2005 | *Investment Funds, Companies and Miscellaneous Provisions Act 2005* | The whole Act |

",

and

(*d*) by inserting in Part 2 the following items after the item relating to the European Communities (Cross Border Payments in Euro) Regulations 2002 (S.I. No. 335 of 2002):

"

| | | |
|---|---|---|
| S.I. No. 211 of 2003 | European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations 2003 | The whole instrument |
| S.I. No. 198 of 2004 | European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations 2004 | The whole instrument |
| S.I. No. 727 of 2004 | European Communities (Financial Conglomerates) Regulations 2004 | The whole instrument |
| S.I. No. 853 of 2004 | European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 | The whole instrument |
| S.I. No. 13 of 2005 | European Communities (Insurance Mediation) Regulations 2005 | The whole instrument |
| S.I. No. - of 2005 | Market Abuse (Directive 2003/6/EC) Regulations 2005 | The whole instrument |
| S.I. No. - of 2005 | Prospectus (Directive 2003/71/EC) Regulations 2005 | The whole instrument |

".

*Section 77.*

## SCHEDULE

### Amendment of European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003) as Amended

*Amendment of Regulation 2(1)*

1. Regulation 2(1) is amended—

(*a*) by inserting the following before "transferable securities":

" 'sub-fund' means a separate portfolio of assets maintained by a UCITS in accordance with its trust deed, deed of constitution or articles;", and

(*b*) by substituting the following for the definition of "umbrella fund":

" 'umbrella fund' means a UCITS which is divided into a number of sub-funds, and each sub-fund shall be treated

as a separate UCITS for the purposes of the application of Part VII of these Regulations;".

*Addition of new Regulation 32A*

2. The following is inserted after Regulation 32:

"Cross investment by sub-funds of an umbrella fund.

32A.—(1) A company to which this chapter applies and which is established as an umbrella fund may acquire by way of subscription or transfer for consideration shares in one sub-fund of the company for the account of another sub-fund of the company in accordance with Regulation 51.

(2) Shares acquired under this Regulation may be held for the account of the sub-fund for which they were acquired and need not be cancelled.".

*Amendment of Regulation 35*

3. Regulation 35(1)(b) is amended by inserting the following after "section 41 (restriction on company acquiring its own shares);":

"section 43 (treatment of shares held by or on behalf of a public limited company);

section 43A (accounting for own shares);".

*Addition of new Regulation 36F*

4. The following is inserted after Regulation 36E:

"Application of segregated liability to investment companies established as UCITS.

36F.—The provisions of sections 256A to 256E of the Companies Act 1990 (inserted by *section 25* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005*) shall apply to any investment company authorised pursuant to these Regulations and for this purpose the references to umbrella fund and sub-fund shall be interpreted in accordance with the provisions of these Regulations, the references to authorisation shall be read as referring to authorisation pursuant to these Regulations and the reference to the commencement date shall be read as referring to the commencement date of *section 25* of the *Investment Funds, Companies and Miscellaneous Provisions Act 2005*.".

*Addition of new Regulation 51A*

5. The following is inserted after Regulation 51:

"UCITS umbrella funds.

51A.—An umbrella fund may acquire the units of one sub-fund for the account of another sub-fund within that umbrella, subject to the provisions of Regulation 51 and such conditions as may be imposed by the Bank.".

*Addition of new Regulation 79A*

6. The following is inserted after Regulation 79:

"79A.—(1) Notwithstanding section 148(2) of the Companies Act 1963 (inserted by the European Communities (International Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 (S.I. No. 116 of 2005)) an investment company to which chapter 1 or 2 of Part VI applies may, in respect of its individual accounts, opt to prepare those accounts in accordance with both of the following, namely—

(*a*) an alternative body of accounting standards, and

(*b*) section 149A of the Companies Act 1963,

as if the references in that section 149A to international financial reporting standards were references to that alternative body of accounting standards.

(2) In the application of subsections (4), (5) and (6) of section 148 of the Companies Act 1963 to an investment company which has opted under paragraph (1) to prepare its accounts in accordance with an alternative body of accounting standards—

(*a*) the reference in that subsection (4) to international financial reporting standards shall be read as a reference to that alternative body of accounting standards, and

(*b*) there shall be substituted for 'IFRS', in each place where it occurs in those subsections (4), (5) and (6), 'ABAS' (which shall be read as referring to that alternative body of accounting standards).

(3) For the purposes of this Regulation, accounts shall not be regarded as having been prepared in accordance with an alternative body of accounting standards unless the accounts concerned would, were they to have been prepared by a company or undertaking registered in the relevant jurisdiction, be regarded as having been prepared in accordance with those standards.

(4) In this Regulation—

'alternative body of accounting standards' means standards that accounts of companies or undertakings must comply with that are laid down by such body or bodies having authority to lay down standards of that kind in—

(*a*) United States of America,

(*b*) Canada,

(*c*) Japan, or

(*d*) any other state or territory prescribed for the purposes of the section hereafter mentioned in this paragraph,

as are prescribed under the Companies Act 1990 for the purposes of section 260A(4) (inserted by the *Investment Funds, Companies and Miscellaneous Provisions Act 2005*) of that Act;

'relevant jurisdiction' means the state or territory in which the alternative body of accounting standards concerned have effect.".

*Amendment of Regulation 85*

7. Regulation 85 is amended by inserting the following after paragraph (10):

> "(11) The requirements of this Regulation shall apply with appropriate modifications to auditors of a management company.".